

appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report;

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report;

(iii) Whether the United States has taken enforcement action to effectively address the IUU fishing activity of the identified nation described in the biennial report; and

(iv) Whether the identified nation has cooperated in any action taken by the United States to address the IUU fishing activity described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

[76 FR 2024, Jan. 12, 2011, as amended at 78 FR 3343, Jan. 16, 2013]

§ 300.203 Identification and certification of nations engaged in bycatch of protected living marine resources.

(1) NMFS will identify and list, in the biennial report to Congress nations—

(i) whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national jurisdiction

that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States;

(ii) if the nation is a party to or maintains cooperating status with the relevant international organization with jurisdiction over the conservation and protection of the relevant PLMRs, or a relevant international or regional fishery organization, and the organization has not adopted measures to effectively end or reduce bycatch of such species; and

(iii) the nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures.

(2) When determining whether to identify nations as having fishing vessels engaged in PLMR bycatch, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(3) NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that are comparable in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficiency of such measures to end or reduce bycatch of the pertinent PLMRs.

(b) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart.

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(c) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for protected living marine resources that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

(d) *International cooperation and assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph(e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive

certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch* (1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

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